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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

J. MARTIN ROBERTSON,

Plaintiff and Appellant,

v.

LARKSPUR COURTS ET AL.,

Defendants and Respondents.

A154206

(Marin County
Super. Ct. No. CIV1504551)

Plaintiff J. Martin Robertson sued various entities after he discovered mold in his apartment. He and the four of those entities that appeared in the case—Teachers Insurance and Annuity Association of America, Riverstone Residential Group, LLC, Greystar RS CA, Inc., and Greystar Real Estate Partners, LLC (collectively, respondents)—mediated their dispute and entered a stipulation for settlement (Stipulation) to resolve the litigation. In a prior unpublished opinion (*Robertson v. Larkspur Courts* (May 22, 2018, A152226)), we affirmed a judgment awarding Robertson \$28,000 and the trial court’s order granting respondents’ request for sanctions.

Robertson now appeals after the trial court entered an order (order) directing him to provide respondents with his date of birth and Social Security number to enable them to comply with federal Medicare reporting obligations involving settlements. His primary contentions are that the order must be reversed because (1) the court did not have jurisdiction to enforce a term not expressly included in the Stipulation, (2) respondents have no “legitimate interest or need” in his personal information because it is unnecessary for compliance with federal requirements, and (3) his liberty and privacy

interests outweigh any interest in obtaining his personal information that respondents do have. We conclude that the court lacked jurisdiction under Code of Civil Procedure¹ section 916 to enter the order while Robertson's prior appeal was pending.² Therefore, we vacate the order and remand for further proceedings.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

The facts underlying Robertson's claims and the procedural history of the case through the original entry of judgment may be briefly summarized from our prior opinion. Robertson, who is a lawyer, filed this suit in December 2015 against respondents and four other named defendants. Approximately a year later, Robertson and respondents reached a settlement in principle and signed the Stipulation, under which Robertson agreed to discharge his claims in exchange for \$28,000. A few months after that, the trial court granted Robertson's motion to enter judgment and did so under section 664.6, requiring respondents to pay Robertson \$28,000, the parties to enter a mutual release, and Robertson to give respondents a form dismissal of the action with prejudice. Robertson unsuccessfully moved to vacate the judgment and for entry of an amended judgment, based on his contention that the judgment did not reflect the Stipulation's material terms. He then appealed to this court, which in May 2018 affirmed the judgment and the trial court's order awarding sanctions against him.

Meanwhile, in January 2018, respondents filed a motion in the trial court to compel Robertson to provide his date of birth and Social Security number and to stay enforcement of the judgment until he complied. Respondents argued, supported by a declaration from a claims director with their insurance company, that before they could pay Robertson they needed his information to enable compliance with federal reporting requirements. Robertson opposed the motion, arguing that the court did not have

¹ All statutory references are to the Code of Civil Procedure.

² We requested and received supplemental briefing from the parties on this issue. Because we decide the appeal on this ground, we deny Robertson's two pending requests for judicial notice as unnecessary.

authority to order him to disclose his personal information, respondents did not need that information to comply with federal reporting requirements, and disclosure would violate his federal and state constitutional rights to privacy.

On February 23, 2018, after a hearing, the trial court granted respondents' motion in part. After determining that access to Robertson's personal information was "necessary for [respondents] to satisfy their federal Medicare reporting requirements," the court ruled that this necessity outweighed Robertson's privacy interests. The court also concluded that requiring Robertson to disclose his information would not "materially alter" the Stipulation's terms, as the disclosure was "simply a ministerial act, one reasonably necessary so that material terms of the settlement can be executed while complying with federal law" and was implicitly required by the duty of good faith and fair dealing.

The trial court ordered that Robertson provide his date of birth and Social Security number to respondents within 10 days of the order, conditioned respondents' obligation to pay on his compliance with this directive, and stayed the accrual of post-judgment interest until he provided the relevant information. In addition, the court made the disclosure subject to a protective order limiting respondents' use and retention of Robertson's information. This appeal followed.

II. DISCUSSION

Section 916 provides that, with certain exceptions, "the perfection of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order." (§ 916, subd. (a).) "The purpose of the automatic stay provision of section 916, subdivision (a) 'is to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided. The [automatic stay] prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it.' " (*Varian Medical Systems*,

Inc. v. Delfino (2005) 35 Cal.4th 180, 189 (*Varian*).) “In determining whether a proceeding is embraced in or affected by the appeal, we must consider the appeal and its possible outcomes in relation to the proceeding and its possible results. ‘[W]hether a matter is “embraced” in or “affected” by a judgment . . . within the meaning of [section 916] depends on whether postjudgment . . . proceedings on the matter would have any effect on the “effectiveness” of the appeal.’ ” (*Ibid.*)

We begin by discussing the order in relation to the judgment. The judgment required (1) respondents to remit the \$28,000 payment to Robertson within 20 days of notice of entry of the judgment, (2) the parties to “accept a standard mutual release” of their claims, and (3) Robertson to sign and deliver to the respondents a form dismissal with prejudice of the action within 10 days of receiving the settlement payment. The order denied respondents’ request to stay enforcement of the judgment, and it instead directed Robertson to provide his personal information to respondents within 10 days and provided that respondents’ “obligation to make the settlement payment is conditioned on [Robertson’s] compliance with this order.” We agree with respondents that the order “effectively modif[ied] the [j]udgment.”

Contrary to respondents’ position, however, this modification was not authorized under section 916. Respondents argue that “the [o]rder did not, nor could it, have an impact on the status quo or effectiveness of the appeal of the [j]udgment.” They concede that “the outcome of the appeal could affect the [o]rder,” in that the order would have been rendered moot had we reversed the judgment. But they contend the order “simply had no bearing on whether the [j]udgment would be vacated, and, therefore, no impact whatsoever on the effectiveness of Robertson’s appeal of the [j]udgment.” (Emphasis omitted.) We are not persuaded. Our state Supreme Court has specifically determined that one way in which a postjudgment proceeding may affect an appeal’s effectiveness is if the proceeding “directly or indirectly seek[s] to ‘enforce, vacate or *modify* [the] appealed judgment.’ ” (*Varian, supra*, 35 Cal.4th at p. 189, italics added.) Robertson’s prior appeal was concerned primarily with whether the judgment accurately reflected the Stipulation’s terms. We cannot say that the trial court’s modification of the judgment to

make respondents' payment conditional on Robertson's disclosure of his personal information "could or would have occurred regardless of the outcome of the appeal," considering a potential outcome was the judgment's reversal. (*Id.* at p. 191.) Thus, entry of the order was precluded under section 916's general terms.³

We therefore turn to whether an exception to section 916 applies. Respondents claim that two such exceptions exist here, which we discuss in turn.

First, "[u]nless an undertaking is given, the perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order is for . . . [m]oney or the payment of money, . . . and whether payable by the appellant or another party to the action." (§ 917.1, subd. (a)(1).) We agree with respondents that the judgment was for money or the payment of money within the meaning of this provision, in that the judgment directed respondents to pay \$28,000 to Robertson. It is also true that no bond was posted. But the exception to an automatic stay under this provision exists only for "*enforcement of the judgment*" appealed from, not proceedings in the case as a whole. (*Ibid.*, italics added.) Indeed, subdivision (b) of section 916 makes clear that there may be "a stay of proceedings other than the enforcement of the judgment." We cannot agree that the trial court had jurisdiction to enter the order on the theory that it involved enforcement of a money judgment entered *against respondents*. To the contrary, the order effectively interrupted enforcement of the money judgment by conditioning it on Robertson's disclosure of his personal information. Moreover, even if we could say that the order did involve enforcement of the money judgment, the purpose of the undertaking requirement—" 'to protect the judgment won in the trial court from becoming uncollectible while the judgment is subjected to appellate review' "—would

³ At oral argument, respondents cited for the first time the Sixth District Court of Appeal's decision in *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 310–311. Respondents read this case to suggest that section 664.6 trumps section 916, so that the former statute authorizes a trial court to retain jurisdiction to enforce the terms of a settlement after entering judgment upon it even while an appeal from the judgment is pending. Were we to agree, it would not help respondents because, as we explain below, the order cannot be construed as enforcing the judgment in the traditional sense.

not be served by applying it against Robertson, the party to whom the money is due. (*Leung v. Verdugo Hills Hospital* (2008) 168 Cal.App.4th 205, 211–212.) Section 917.1, subdivision (a) does not apply in these circumstances.

Second, “[t]he perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order appealed from directs the execution of one or more instruments unless the instrument or instruments are executed and deposited in the office of the clerk of the court where the original judgment or order is entered to abide the order of the reviewing court.” (§ 917.3.) Respondents claim that the judgment “direct[ed] the execution of one or more instruments” in that it required the parties to “accept a standard mutual release of all . . . claims and causes of action” involving Robertson’s occupancy of the Larkspur apartment. Again, however, we cannot construe the order as involving the “enforcement” of the obligation to enter such a release, which the order did not address. And even if we could, this aspect of the judgment required both respondents and Robertson to execute a release that did not yet exist, begging the question of how Robertson could have executed it and deposited it on his own so as to enable a stay. The trial court did not have jurisdiction to enter the order under section 917.3 either.

As a result, we conclude that the order must be vacated. We reach this conclusion reluctantly, however, because we recognize the possibility that the parties will remain cemented in their positions, respondents will seek and obtain the same order from the trial court, and Robertson will again appeal from it, bringing us back to square one. It is our fervent hope that, to avoid having this unsatisfying scenario become reality, the parties will reasonably and in good faith attempt to resolve their remaining differences.

III. DISPOSITION

The trial court’s February 23, 2018 order is vacated, and the matter is remanded for further proceedings consistent with this opinion. The parties shall bear their own costs on appeal.

Humes, P.J.

WE CONCUR:

Margulies, J.

Banke, J.

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